

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIFFANY HILL,

Plaintiff,

v.

XEROX CORPORATION, et al.,

Defendants.

CASE NO. C12-0717-JCC

ORDER

This matter comes before the Court on Defendants' motions to seal (Dkt. Nos. 45, 53, 64). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part the motions for the reasons explained herein.

I. BACKGROUND

Defendants' motions to seal are placeholder motions under Local Civil Rule 5(g)(2) and the parties' stipulated protective order, which was approved by the Court. (Dkt. No. 32.) Plaintiff has filed responses to the motions to seal, arguing that Defendants have failed to meet their burden of demonstrating either good cause or compelling reasons to seal the relevant documents. (Dkt. Nos. 49, 68). In their replies, Defendants have provided more details about the relevant documents. (Dkt. Nos. 50, 71, 72.)

II. DISCUSSION

1 “Historically, courts have recognized a ‘general right to inspect and copy public records
2 and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of*
3 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
4 U.S. 589, 597 & n. 7 (1978)). A party seeking to keep documents attached to a dispositive
5 motion under seal must “meet the high threshold of showing that ‘compelling reasons’ support
6 secrecy.” *Id.* at 1180. To keep documents attached to a non-dispositive motion under seal, a party
7 need only show “good cause” under Federal Rule of Civil Procedure 26(c). *Id.*

8 **1. Protective order**

9 The local rules provide that “[t]here is a strong presumption of public access to the
10 court’s files.” W.D. Wash. Local Civ. R. 5(g). The parties’ stipulated protective order concerned
11 the treatment of confidential information but did not provide a blanket justification for
12 overcoming this presumption. Instead, the protective order explicitly provided that it did not
13 “presumptively entitle parties to file confidential information under seal.” (Dkt. No. 31-1 at 2.)

14 **2. First Motion to Seal (Dkt. No. 45)**

15 Defendants’ first motion to seal concerns approximately 250 pages of documents, which
16 the Court has reviewed. The parties agree that the standard for reviewing whether these
17 documents should remain under seal is whether “good cause” exists. (Dkt. No. 45 at 1; Dkt. No.
18 49 at 1.) Defendant argues that there are three categories of documents, all of which should
19 remain under seal: documents containing information regarding the rates and methods for
20 determining employee compensation (Dkt. No. 50 at 5); documents containing the geographic
21 and staffing information about call centers (Dkt. No. 50 at 6); and documents detailing the call
22 centers’ operational policies and procedures (Dkt. No. 50 at 7). The Court finds that it is
23 appropriate to maintain under seal these documents because they contain confidential
24 information related to how Defendants operate and maintain their call center. Indeed, many of
25 the documents contain enough detail that they are “sources of business information that might
26 harm [Defendant’s] competitive standing” if revealed. *In re Electronic Arts, Inc.*, 298 Fed. App’x

1 568, 569 (9th Cir. 2008). Although there is a presumption of public access to court files, the
2 information contained in these documents has little public value beyond that presumption. *See*
3 *Hanson v. Wells Fargo Home Mortg., Inc.*, No. C13-0939-JLR, 2013 WL 5674997 at *2 (W.D.
4 Wash. Oct. 17, 2013) (recognizing that “good cause” standard applies because public interest is
5 relatively low). Instead, the documents contain details about Defendants’ business operations
6 that would primarily be of interest for Defendants’ competitors. Accordingly, the Court finds that
7 there is good cause to keep these documents under seal.

8 **3. Second Motion to Seal (Dkt. No. 53)**

9 Defendants also seek to seal a number of declarations from various individuals
10 discussing the operational details of the relevant call centers. The parties agree that the “good
11 cause” standard should apply in determining whether these should remain under seal. (Dkt. No.
12 53 at 1–2; Dkt. No. 68 at 2.) Having reviewed the substance of the declarations themselves, the
13 Court concludes that some of the information is repetitive of unsealed information contained in
14 the parties’ motions, but there are also numerous details about the employee compensation plan
15 and how the call centers are operated. As Defendants argue, these policies and procedures
16 determine the productivity and efficiency of the call centers and constitute competitively
17 sensitive information. And like the documents already discussed, these operational details have
18 little public value beyond that inherent in the value of having any court records be publically
19 available. The Court therefore finds that good cause exists to keep these documents sealed.

20 **4. Motion to Seal Dkt. No. 65**

21 Defendants’ third motion to seal relates to the ACS employee guidebook, portions of the
22 Xerox Services employee guidebook, and copies of the compensation plan used at one call
23 center. (Dkt. No. 65.) These documents are provided in support of Defendants’ motion for partial
24 summary judgment and should therefore remain under seal only if “compelling reasons” exist.
25 *See Kamakana*, 447 F.3d at 1180. Having reviewed the documents, the Court concludes that the
26 copy of the compensation plan is detailed information regarding the employee-compensation

1 plan. As both parties appear to agree, details about the compensation plan are “sources of
2 business information that might harm [Defendant’s] competitive standing” if revealed.
3 *Electronic Arts*, 298 Fed. App’x at 569. There are therefore compelling reasons to keep this
4 document sealed. (Dkt. No. 65, Ex. C.)

5 Although Plaintiff argues that the Xerox Services employee guidebook is available
6 online, it appears that the link would have been unavailable without a password. (Dkt. No. 72.)
7 Even so, the Court has reviewed the employee guidebooks, and most—perhaps even all—of the
8 information in these guidebooks appears to be relatively generic. The Court does not see how
9 disclosure of this information could damage Defendants. Indeed, most of Defendants’ argument
10 in this motion to seal is about the nature of the employee-compensation information, not the
11 information available in the employee guidebooks. (Dkt. No. 72 at 4–5.) The Court therefore
12 concludes that Defendants have failed to show that there are compelling reasons for keeping
13 these two documents sealed.

14 Defendants are directed to comply with one of the followings options by April 18, 2014:
15 (1) file these employee guidebooks (Dkt. No. 65, Exs. A, B) not under seal, (2) file redacted
16 versions of the guidebooks, with an accompanying memorandum providing a clear statement of
17 the reasons for any redactions; or (3) file a memorandum providing a clear statement of the facts
18 justifying maintaining these guidebooks under seal. Defendants should respond to this Order in a
19 memorandum not to exceed 4 pages, which may be filed under seal if necessary, and include as
20 attachments any unsealed or redacted versions of the relevant documents.

21 **5. Plaintiff’s Pay History**

22 Also filed under seal is a copy of Plaintiff’s pay history. (Dkt. No. 66.) Defendants state
23 that they filed this under seal “[i]n an abundance of caution” because they were unable to contact
24 plaintiff’s attorneys before filing. (Dkt. No. 64 at 5.) Plaintiff requests to unseal this document
25 with redactions for “social security numbers or other personal data identifiers.” (Dkt. No. 68 at
26 5.) Plaintiff’s social security number is already obscured on these records. Plaintiff is directed to

1 file by April 18, 2014, any further objection she has to having this document unsealed.

2 Otherwise, it will be unsealed at that time.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendants' motions to seal (Dkt. Nos. 45, 53, 64) are
5 GRANTED in part. Defendants are ORDERED to file the above-described memorandum and
6 any attachments by April 18, 2014. Plaintiff is ORDERED to provide any further response
7 regarding her pay history by April 18, 2014. The Clerk is respectfully directed to keep under seal
8 all currently filed exhibits.

9 DATED this 7th day of April 2014.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE